PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

212-373-3165

WRITER'S DIRECT FACSIMILE

212-492-0165

WRITER'S DIRECT E-MAIL ADDRESS

bbirenboim@paulweiss.com

June 28, 2018

By Email (via Orran L. Brown, Sr., Esq.)

Special Master Wendell Pritchett, Esq.
Office of the Provost
University of Pennsylvania
3501 Sansom Street
Philadelphia, PA 19104

Dear Special Master Pritchett:

The NFL Parties respectfully submit this letter to address the critical importance of enlisting the assistance of Appeals Advisory Panel members (the "AAPs") and Appeals Advisory Panel Consultants (the "AAPCs") when deciding claim appeals that turn on technical, medical grounds.

The appeals process is, of course, not intended to second-guess medical determinations made by qualified physicians; the appeals process is, however, intended to correct errors in diagnoses supported by clear and convincing evidence, and, as recent appeal determinations demonstrate, it is simply not possible to make that assessment without the assistance of medical experts. Indeed, that was a critical reason for establishing the Appeals Advisory Panel and Appeals Advisory Panel Consultants in the first place. The intent of the Settlement Agreement was that the Court (or the Special Master when

designated for appeals) would consult with AAPs and AAPCs on medical issues when reviewing claim appeal determinations.

Based on our review of recent Post-Appeal Notices of Monetary Award Claim Determination, we understand that these expert resources have not consistently been used on appeals turning on medical issues, and as described below, prior guidance provided by AAPs and AAPCs demonstrate that at least certain of those appeals were incorrectly decided as a result. Where AAPs or AAPCs were not consulted and the claim has not yet been paid, the NFL Parties respectfully request that you stay payment and re-review those appeals with AAP/AAPC consultation to confirm that the Monetary Awards are being paid to Settlement Class Members whose claims are supported by the diagnostic criteria required under the terms of the Settlement Agreement.

* * * *

The Parties to the Settlement Agreement made the AAPs and AAPCs a central part of the claim evaluation and appeal process precisely because they recognized that the Court or its designees (here, the Special Masters) would not be medical experts and would not have the medical training to evaluate medical records and other technical medical issues. The AAP and AAPC positions therefore were created to advise the Court (and, by extension, the Special Masters) on issues requiring inherently technical medical expertise—as in any case where the Court retains experts to advise on technical issues. As the name of the Appeals Advisory Panel suggests, the goal in providing for such assistance was to ensure that appeals are correctly decided as a matter of medicine and to ensure that the Court and Special Masters are not put in the position of having to evaluate diagnoses made by medical professionals without the benefit of proper medical expertise.

To that end, the AAPs are highly-skilled neurologists who are uniquely qualified to evaluate the medical records and other materials submitted in Claim Packages and determine whether a claimant's Qualifying Diagnosis was properly rendered. Similarly, the AAPCs are expert neuropsychologists in the field who, like the AAPs, have unique expertise in and training for evaluating the neuropsychological testing submitted in the Claim Packages that may be relevant to the consideration of the claim appeals. Notwithstanding the central role that the AAPs and AAPCs were designed to play in the appeals process, the NFL Parties understand that AAPs and AAPCs may not have been consulted in connection with several recent appeals turning on critically important medical issues—and in particular, claims relying on diagnoses by Qualified MAF Physicians where the medical records have not previously been reviewed by *any* AAP member.

Despite the fact that Qualified MAF Physicians are approved by the Parties, including the NFL Parties, it nevertheless was always the intent of the Parties that AAPs and AAPCs would be used on appeals involving Qualified MAF Physicians. The Parties did not personally interview these physicians or train them on all aspects of the Settlement program; instead, the Claims Administrator has provided them a manual and periodic alerts on various topics. In fact, and by way of example, the Claims Administrator has informed

the Parties on weekly calls that AAP members who have reviewed the work of certain Qualified MAF Physicians in connection with audits have flagged that they do not believe that certain of these approved providers have an appropriate understanding of the National Alzheimer's Coordinating Center's Clinical Dementia Rating ("CDR") scale used to measure functional impairment. As such, even where an audit did not find sufficient evidence of a material misrepresentation, omission or concealment, that result did not mean that the AAP member who assisted BrownGreer in reviewing diagnoses rendered by Qualified MAF Physicians felt that the diagnoses were medically appropriate and consistent with the terms of the Settlement Agreement. In fact, BrownGreer has specifically suggested to the contrary. As a procedural matter, however, the NFL Parties were required to use the appeals process afforded under the terms of the Settlement Agreement to raise these medical issues for review. To the extent that the Court or Special Master does not use the AAP or AAPC resource in connection with appeals turning on medical issues, however, the ultimate appeal determination of whether there is clear and convincing evidence that the diagnosis was in error is rendered without the benefit of the AAP and AAPC medical expertise on the fundamental issues.

Recent appeal determinations that we believe to have been issued without AAP/AAPC consultation illustrate these concerns when comparing the underlying appeal arguments to Notices of Denial of Monetary Award Claim that reflect the medical expert views of the AAP/AAPC on the diagnostic criteria for Level 1.5 and 2 Neurocognitive Impairment claims.

For example, recent appeal determinations apparently made without AAP consultation rejected the NFL Parties' arguments that a Qualified MAF Physician's Level 2 diagnoses were deficient because the claimants did not establish or corroborate the requisite level of functional impairment to merit a CDR score of 2, including where the claimants continued to drive and coach sports. These determinations are not consistent with prior AAP determinations. Rather, AAP members have denied dozens of dementia claims based on the same arguments made by the NFL Parties in those appeals, including that "the description of daily functional abilities such as the ability to drive independently and perform volunteer duties for church . . . would not be generally consistent with a CDR score of 2.0 in the area of Community Affairs, which requires 'no pretense of independent function,'" and "*[c]onsequently the Qualifying Diagnosis of Level 2 Neurocognitive Impairment is not made in a manner generally consistent with the settlement criteria for that diagnosis.*" (*See* Doc. No. 159462, SPID 260000283 (emphasis added); *see also* Doc. No. 172128, SPID 100004976 ("The Qualifying Diagnosis of Level 2 Neurocognitive Impairment was not made in a manner that is generally consistent with the settlement criteria," including where "volunteering as a *coach for a High School football team*, and *continuing to drive* are not generally consistent with a CDR rating of 2 for the area of Community Affairs") (emphasis added); Doc. No. 172329, SPID 100003630 ("stating that a player who "manages his finances, lives alone, drives, and has a 'rental business'" presents with a history "not generally consistent with CDR scores of 2" and the Level 2 diagnosis "was not made in a manner that is generally consistent with the settlement criteria").)

Moreover, the NFL Parties have argued on appeal that normal or moderately impaired performance on cognitive screening tests such as the MMSE or MOCA, combined with functionality conflicting with the assigned CDR score, provides clear and convincing evidence that the diagnosis was not supported. Although appeals brought on those grounds have been denied (apparently without the assistance of an AAP or AAPC), the NFL Parties' position is supported by numerous prior determinations of AAPs. Indeed, AAP members regularly have expressed that same opinion in recent claim denials. (*See* Doc. No. 166326, SPID 100001522 ("The bulk of the history and data, along with achievement of a 30/30 MMSE score, appear inconsistent with a diagnosis of Level 1.5 Neurocognitive Impairment"); Doc. No. 173271, SPID 100009853 ("Specifically, the score of 25/30 on the MOCA test is not generally consistent with a moderate to severe cognitive decline and the ability to continue to drive, cook, play golf (except due to back pain) . . . are not generally consistent with either the presence of dementia or CDR ratings of 1").)

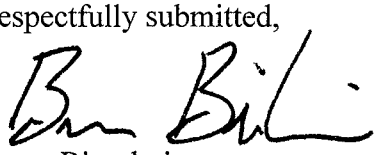
Similarly, the NFL Parties have recently appealed a number of claim determinations on the basis that they were not generally consistent with the Injury Definitions for Level 1.5 or 2 as set forth in the Settlement Agreement for the BAP where the diagnosing physician deviated from applying the BAP diagnostic criteria with regard to the required cognitive domains and the extent of impairment necessary to establish a diagnosis—despite the fact that performance on the claimant's same tests in the BAP conclusively would not permit a Qualifying Diagnosis. AAP members, in consultation with AAPCs, have demonstrated their expertise in analyzing the medical records for similar issues on pre-Effective Date claims. (*See, e.g.*, Doc. No. 172737, SPID 100000393 ("[T]he test battery is not generally consistent with the settlement criteria because multiple variables were derived from the same tests, which inflates the probability of observing a few low scores. When the settlement criteria for impairment in a person of presumed average premorbid ability are applied to the test measures, the Retired NFL Football Player does not meet settlement criteria in any domain").)

Finally, the NFL Parties recently appealed a Qualified MAF Physician's Level 1.5 diagnosis on the basis that the claimant failed five of seven performance validity metrics in a manner that demonstrated malingering according to leading literature. This type of appeal calls for the expertise of the AAPCs, who have analyzed similar situations in several claim denials to date. (*See, e.g.*, Doc. No. 167687, SPID 100002662 ("Additionally the neuropsychological testing performed . . . does not support a Level 1.5 Neurocognitive Impairment diagnosis due to . . . detection of sub-optimal effort or malingering on multiple performance validity tests"); Doc. No. 166325, SPID 100001479 ("The neuropsychological testing findings . . . are not valid because of extremely low scores on two validity measures suggesting suboptimal effort and invalid performance, and insufficient explanation provided for discrepancies and inconsistencies in the test scores. . . . [c]onsequently, the testing does not support the Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, which was not made in a manner generally consistent with the diagnostic criteria specified in the settlement").)

These examples illustrate the critical importance of AAP and AAPC review of medical records when an appeal turns on medical arguments that only highly-trained doctors and neuropsychologists can properly interpret. The expectation was that the Court (or the Special Master) would exercise its discretion to use this resource when appeals involve technical medical issues outside the Court's or Special Master's expertise.

For these reasons, the NFL Parties respectfully request a re-review of recent appeals that have not yet been paid turning on medical issues for which an AAP member was not consulted, with an accompanying stay of payment until that review is complete. The NFL Parties believe that such consultation is necessary to ensure that the medical integrity of the Settlement Program is preserved and that all claims are correctly decided. We further respectfully request that the Special Masters seek the advice of AAPs and AAPCs going forward where an appeal raises technical medical issues.

Respectfully submitted,



Bruce Birenboim

cc: The Honorable Anita B. Brody
Special Master Jo-Ann Verrier, Esq.
Chris Seeger, Esq.
Brad S. Karp, Esq.

SEEGERWEISS LLP
NEW YORK • NEW JERSEY • PHILADELPHIA

July 6, 2018

By Email (Via Orran Brown, Sr., Esq.)

Special Master Wendell Pritchett, Esq.
Office of the Provost
University of Pennsylvania
3501 Sansom Street
Philadelphia, PA 19104

Dear Special Master Pritchett:

I write in response to Bruce Birenboim's letter, dated June 28, 2018, regarding the role of the Appeals Advisory Panel (AAP) and Appeals Advisory Panel Consultants (AAPC) in appeals of claims.

In its submission, the NFL contends that the Special Master, to whom the Court has directed its authority to hear appeals, should be required to consult with the AAP and/or the AAPC when deciding appeals involving medical issues, particularly where the Qualifying Diagnosis at issue was rendered by a Qualified Monetary Award Fund ("MAF") Physician. We disagree. The NFL's request is contrary to the terms of Settlement Agreement, and more generally the intent and structure of the Settlement Program.

The NFL argues that "[t]he intent of the Settlement Agreement was that the Court (or the Special Master when designated for appeals) would consult with AAPs and AAPCs on medical issues when reviewing claim appeal determinations." See NFL's Letter at pp. 1-2. Simply and directly put, that is not the case. Incredibly absent from the NFL's five-page, single-spaced letter is any reference to the one provision of the Settlement Agreement that specifically addresses the discretion afforded the Court and Special Masters with respect to the AAPs and AAPCs role and involvement in the appeal process.[1] Section 9.8 of the Settlement Agreement, entitled "Review and Decision," provides:

> The Court will make a determination based upon a showing by the appellant of clear and convincing evidence. *The Court may be assisted, in its discretion, by any member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant.* The decision of the Court will be final and binding. (Emphasis added).[2]

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[1] In its Order Appointing the Special Masters, the Court expressly contemplated delegating its authority over any appeals to the Special Masters: "With respect to an appeal of a Monetary Award or Derivative Claimant Award determination, an appellant must submit an appeal to the Court. The Court may, in its discretion, refer an appeal to the Master(s). The Court or the Master(s) will decide an appeal of a Monetary Award or Derivative Claimant Award based upon a showing by the appellant of clear and convincing evidence." ECF No. 6871.

[2] The Rules Governing Appeals of Claim Determinations promulgated by the Special Masters contains virtually identical language; the Rules substitute "Special Master" for "The Court." *See* Rule 22.

The Settlement Agreement makes clear that the Court (and likewise a Special Master) has the sole discretion to decide if and when consultation with the AAP and/or the AAPC may be appropriate in considering an appeal. That is for good reason.

The Settlement Agreement provides the specific contours of the Appeals Advisory Panel role in the review of Qualifying Diagnoses. Indeed, far from creating a medical-review panel charged with review and confirmation of *all* Qualifying Diagnoses, the parties negotiated and agreed that generalized review by the AAP of Qualifying Diagnoses is confined to specific circumstances, *i.e.*, the review of (a) pre-Effective Date diagnoses rendered in particular time windows or by particular physicians, *see* Settlement Agreement §6.4(a) ("Qualifying Diagnosis Review by Appeals Advisory Panel. A member of the Appeals Advisory Panel must review, as set forth in Section 6.4(b), Qualifying Diagnoses made prior to the Effective Date…"); and (b) the rare post-Effective Date diagnosis rendered through the BAP where the two BAP providers evaluating the Retired Player do not agree on the Qualifying Diagnosis, *see* Settlement Agreement §5.13 ("Conflicting Opinions of Qualified BAP Providers"). Notably, for each such circumstance, the Settlement Agreement provides great detail on the information to be provided to the AAP member, the considerations to be weighed, and the report to be rendered in resolution of the issue. The Settlement Agreement entrusts no broader generalized responsibility to the Appeals Advisory Panel for review of Qualifying Diagnoses.

That is because, for post-Effective Date claims, the Qualified MAF Physicians and BAP Providers—selected by the Claims and BAP Administrators and approved by the NFL and Class Counsel—are entrusted with determining the existence or not of a Qualifying Diagnosis. There is no generalized medical panel cross-check by the AAP on post-Effective Date Qualifying Diagnoses—not in initial review by the Claims Administrator nor more broadly on appeal. For post-Effective Date diagnoses, only a physician selected and approved by the Settlement Program can render a Qualifying Diagnosis. That is the mechanism negotiated by the parties for confirming the existence or not of a Qualifying Diagnosis in post-Effective Date evaluations.

While the NFL's request for compulsory involvement of AAP and AAPC members in appeals of post-Effective Date Qualifying Diagnoses finds no support in Section 9.8 of the Settlement Agreement, it more broadly misconstrues the nature of review of post-Effective Date claims. The Settlement Agreement, with great clarity, states who is responsible for reviewing particular Qualifying Diagnoses. For the most part, the date of the Qualifying Diagnosis dictates who is responsible for reviewing that Qualifying Diagnosis. Some Qualifying Diagnoses are to be reviewed by the Claims Administrator, while others are to be reviewed by the AAP. Specifically, under the negotiated terms of the Settlement Agreement, the Claims Administrator, as opposed to the AAP, is responsible for reviewing post-Effective Date Qualifying Diagnoses (dated after January 7, 2017), including those Qualifying Diagnoses rendered by BAP Providers and Qualified MAF Physicians. AAPs are only responsible for reviewing pre-Effective Date Qualifying Diagnosis (dated after July 1, 2011 but on or before January 7, 2017).[3] That negotiated framework reflects the determination and agreement of the parties that Qualifying Diagnoses rendered by the

[3] The Claims Administrator, not the AAP, is responsible for reviewing Qualifying Diagnoses dated on or before July 1, 2011.

party-approved BAP Providers and/or Qualified MAF Physicians are trustworthy.[4] For that reason, BAP and MAF diagnoses are only subject to *administrative* review by the Claims Administrator. *See* Settlement Agreement §§ 8.3-8.5, 9.1. Further, the negotiated scope of any appeal of the Claims Administrator's administrative determination of post-Effective Date claims is limited to a party's "good faith belief that the *determination of the Claims Administrator* was incorrect." *See* Settlement Agreement §§ 9.5 (emphasis added).[5] Broader challenge to the underlying diagnosis made by a BAP Provider or Qualified MAF Physician by the NFL was not contemplated, and should not be permitted under the Settlement Agreement. For appeals of post-Effective Date Qualifying Diagnoses, it is thus unsurprising that the Special Masters would find no generalized need, in the exercise of their discretion, to seek the input of AAP or AAPC on diagnoses rendered by a Qualified MAF physician or BAP provider.

The NFL's effort to impose medical review by an AAP on each appeal is a re-write of the Settlement Agreement—a re-write that now, post-approval and implementation, would significantly upset the negotiated compromises among the Parties. While the NFL highlights purported deviations in diagnosis by the Qualified MAF physicians and BAP providers that it approved,[6] it is clear that it is the NFL that is at odds with the medical establishment, having already appealed more than 50% of all Level 1.5 and Level 2 Neurocognitive Impairment claims involving diagnoses rendered by Qualified MAF Physicians.

Of note, the Retired Players the NFL seeks to impact through its proposed re-write of the appeal process are those that did as the Settlement Agreement specifically guided, and obtained their Qualifying Diagnoses through providers selected, approved, and endorsed by the Settlement Program. That is, since these Retired Players had not received a Qualifying Diagnosis before the Effective Date of the Settlement, they went to Qualified BAP Providers or Qualified MAF Physicians to be evaluated, and received their Qualifying Diagnosis by medical providers approved by the NFL. These Players proceeded as guided, and deserve to have the NFL's appeals of their awards handled in accordance with the negotiated terms of the Settlement Agreement.

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[4] Ironically, when the NFL closes its appeals of pre-Effective Date diagnosis claims, most of which have been reviewed by the AAP, one of its standard refrains is that the player has nothing to lose, he can always get a free BAP exam or go through the MAF. In those appeals, the NFL points to the BAP and MAF as trusted sources for Qualifying Diagnoses.

[5] Section 9.5, entitled "Scope of Appeals," states in full: "The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award under this Settlement Agreement, and/or the calculation of the Monetary Award or Derivative Claimant Award, is appealable by the Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties based on their respective good faith belief that the determination by the Claims Administrator was incorrect."

[6] Despite acknowledging on the first page of its letter that "The appeals process is, of course, not intended to second-guess medical determinations made by qualified physicians . . .", that is exactly what the NFL is doing. While some of NFL's arguments are improperly based on the results of what it admits are only screening tests (e.g., MOCA), most of its "concerns" reflect its disagreement with the Qualified MAF Physicians' application of the "generally consistent" standard, and its related unrelenting (and unfounded) insistence that the diagnostic criteria for Qualifying Diagnoses rendered through the MAF be identical to those required in the BAP.

In conclusion, the NFL's dissatisfaction with the Special Masters' decisions on appeal cannot serve as the basis for the relief sought. The Settlement Agreement neither contemplates nor permits generalized review by the AAP of all post-Effective Date claims on appeal. The NFL's request for a re-write of the Settlement Agreement on this point should be denied.

Respectfully submitted,

Christopher Seeger

cc: The Honorable Anita B. Brody
Special Master Jo-Ann Verrier, Esq.
Brad S. Karp, Esq.
Bruce Birenboim, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
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UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

212-373-3165

WRITER'S DIRECT FACSIMILE

212-492-0165

WRITER'S DIRECT E-MAIL ADDRESS

bbirenboim@paulweiss.com

July 11, 2018

By Email (via Orran L. Brown, Sr., Esq.)

Special Master Wendell Pritchett, Esq.
Office of the Provost
University of Pennsylvania
3501 Sansom Street
Philadelphia, PA 19104

Special Master Use of the Appeals Advisory Panel on Claim Appeals

Dear Special Master Pritchett:

The NFL Parties respectfully submit this letter to respond to certain erroneous contentions in Co-Lead Class Counsel's July 6, 2018 letter responding to our June 28, 2018 letter concerning the above-referenced issue.

Critically, Co-Lead Class Counsel does not, and cannot, contest that recent appeal determinations (apparently made without AAP consultation on technical medical issues) reflected findings squarely at odds with prior AAP determinations on those same medical issues—demonstrating precisely why expert consultation is important. Instead, Co-Lead Class Counsel argues—in blatant bad faith and in conflict with their many prior statements on the matter and the Settlement Agreement to which they agreed—that the NFL Parties lack an appeal right of diagnoses made by Qualified MAF Physicians and

Qualified BAP Providers, and that the role of the Appeals Advisory Panel members ("AAPs") and the Appeals Advisory Panel Consultants ("AAPCs") is limited to reviewing pre-Effective Date claims. Neither argument is correct.

First, Co-Lead Class Counsel's position that the NFL Parties do not have the right to appeal a claim determination based on a diagnosis made by a Qualified MAF Provider or Qualified BAP Providers has no support in the Settlement Agreement. (*See* Seeger Letter at 3.) Section 9.5 of the Settlement Agreement, which sets forth the scope of appeals, describes two distinct areas of appeal: (i) "The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award"; and (ii) "the calculation of the Monetary Award." Co-Lead Class Counsel's argument that the reference to "the Claims Administrator's determination" in that provision somehow strips the NFL Parties of their appeal regarding the diagnosis is wrong.

The Claims Administrator—not the underlying physician—is always the entity that issues the determination, regardless of when the diagnosis occurs or who makes the diagnosis.[1] Contrary to Co-Lead Class Counsel's suggestion, however, the Claims Administrator never makes a diagnosis; there is always an underlying physician who makes the diagnosis, whether it is a Qualified MAF Physician, Qualified BAP Providers, or a pre-Effective Date physician. The clear intent for the scope of appeal, as the words of Section 9.5 state, was the substantive issue of "whether a Settlement Class Member is entitled to a Monetary Award"—in other words, does he have the claimed diagnosis or not? There is no other issue to which these words reasonably could be construed to refer. This view is bolstered by the fact that subsection (ii)'s reference to the "calculation of the Monetary Award" refers to the Claims Administrator's more mechanical determination with regard to offsets and age at the time of diagnosis. As such, the only appeal even possibly contemplated by subsection (i)'s reference to "whether a Settlement Class Member is entitled to a Monetary Award" is if the diagnostic criteria set forth in the Settlement Agreement have been met. Otherwise, the two subsections would refer to the same thing—the mechanical check on the calculation of the award based on years played, history of Stroke or TBI, and age—and would be completely redundant of each other, a view that is flatly contrary to traditional rules of statutory construction which require that each provision be given a separate and independent meaning.

If there were any doubt on this issue, Co-Lead Class Counsel's submission to Court in seeking approval of the Settlement Agreement proves the distinction between these two areas of appeal. There, Co-Lead Class Counsel conceded that "the NFL Parties have a right to appeal either a determination of whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award, or the amount of the Award."

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[1] In fact, the Claims Administrator does not conduct a substantive review of MAF and BAP diagnoses when issuing claim determinations in part because the Settlement Program was designed to permit the NFL Parties to review those diagnoses in consultation with medical experts and appeal those diagnoses that reflect errors.

(*See* Mem. of Law in Support of Class Pls.' Mot. for an Order Granting Final Approval of the Settlement and Certification of Class and Subclass 26, ECF No. 6423-1; *see also* Rule 7 of Rules Governing Appeals of Claim Determinations ("[T]he NFL Parties may appeal determinations by the Claims Administrator as to: (1) whether the Retired NFL Football Player (or Representative Claimant) is entitled to a Monetary Award; (2) how the Claims Administrator calculated the Monetary Award; and (3) whether the Claim Package is valid without medical records under Section 8.2(ii) of the Settlement Agreement.").)

Co-Lead Class Counsel's claim that diagnoses made by Qualified MAF Providers or Qualified BAP Providers are somehow immune to review on appeal because the physicians were approved by the Parties is a *non sequitur*, particularly where, as here, the NFL Parties have committed to uncapped liability based on diagnoses rendered by these physicians over the next 65 years. The fact that the Parties approved the Qualified MAF Physicians and Qualified BAP Providers based on limited diligence does not make them infallible. This is precisely why the Parties created the AAPs and AAPCs, who are highly-credentialed neurologists and neuropsychologists at the top of their fields, stringently vetted by the Parties for the very purpose of reviewing diagnoses made in the Settlement Program. And, indeed, as the NFL Parties' June 28, 2018 letter noted, the Claims Administrator has received feedback from the AAPs and AAPCs in connection with audits that certain MAF and BAP physicians have committed material errors[2] (despite, in certain instances, finding no evidence of potential fraud), and the Claims Administrator

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[2] For example, BrownGreer terminated Qualified MAF Physician Dr. Jason Muir on July 9, 2018. In notifying the Parties of that termination, BrownGreer noted that Dr. Muir diagnosed a retired player with Level 2 Neurocognitive Impairment despite employment not compatible with that diagnosis and Dr. Muir disregarding neuropsychological testing results in which the retired player "failed validity measures so badly that the neuropsychologist found that he did not meet the criteria for neurocognitive impairment." (July 9, 2018 email from Morgan Meador to the Parties.) In a related audit of the retired player's lawyer, an AAPC agreed with the findings of performance invalidity and an AAP found it unusual for Dr. Muir to disregard such test results. Had it not been for the related audit, this claim would have been approved as a Qualified MAF Physician diagnosis, and the NFL Parties would have been required to appeal on the basis that the diagnosis was rendered in error.

Co-Lead Class Counsel also seeks to mislead by arguing that the NFL's appeal rate of Level 1.5 and 2 claims involving diagnoses rendered by Qualified MAF Physicians evidences that the NFL "is at odds with the medical establishment." (Seeger Letter at 3.) Not so. Co-Lead Class Counsel knows full well—as do the Special Masters—that the vast majority of those appeals involve a single Qualified MAF Physician, Dr. Randolph Evans, who has since been terminated from his role by BrownGreer and provided a grossly disproportionate share of the total dementia diagnoses by Qualified MAF Physicians, and/or a neuropsychological practice group in Texas that administered the BAP testing regime to claimants but altered its diagnostic criteria to allow diagnoses that would be impermissible in the BAP. The Settlement Program's short history demonstrates that Qualified MAF Physicians are not unerring, and the NFL Parties' appeal right is a necessary check on the payment of otherwise invalid claims.

determined that the proper procedure for raising those errors was through the NFL Parties' appeal right.

Second, Co-Lead Class Counsel misleadingly minimizes the agreed-upon role of AAPs and AAPCs by citing their responsibilities to review pre-Effective Date claims and certain disagreements between Qualified BAP Providers as to an appropriate diagnosis, if any. (Seeger Letter at 2.) But the fact that the AAPs and AAPCs have these roles does not mean that they do not also have a key role in appeals of post-Effective Date claim determinations from Qualified MAF Physicians and Qualified BAP Providers. This is demonstrated by examining the "legislative history" of this provision. Co-Lead Class Counsel fails to mention the uncontestable fact that the Parties agreed to the creation of the aptly named *Appeals* Advisory Panel in the initial proposed settlement agreement—*at which time there was no mandatory pre-Effective Date AAP claim review*. Pre-Effective Date review was added to the revised settlement agreement as a fraud protection when the Parties uncapped the NFL Parties' liability. This new responsibility supplemented the role of the AAP to bolster overall protections; the Parties never agreed to eliminate other intended roles. Now, as it was then, the primary and originally intended purpose of the Panel was, as its name demonstrates, to assist on claim appeals over the 65-year term of the Settlement Agreement. As such, the intent was always for the AAPs and AAPCs to advise the Court on inherently technical medical issues that inevitably would arise on appeals and elsewhere. The language of Section 9.5 is fully consistent with this view.

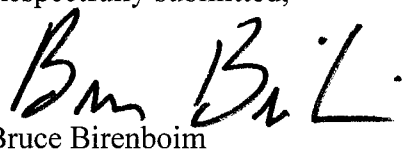
Co-Lead Class Counsel is also wrong that the NFL Parties' position is that it is "compulsory" and "mandatory" to involve the AAPs and AAPCs on every appeal. (Seeger Letter at 1-2.) That is not the NFL Parties' view. There may well be appeals where the record is clear in favor of appellant or appellee and the Special Master or Court need not seek consultation. But where the appeal involves technical medical issues—as recent appeals have done in a manner that goes to the heart of the diagnostic criteria of the Settlement Agreement—the plain language of the Settlement Agreement, and the Parties' plain intent was for the fact finder to use the neutral expert AAPs and AAPCs jointly recommended by the Parties and appointed "to advise the Court or the Special Master with respect to medical aspects of the Class Action Settlement." (Settlement Agreement, § 2.1(g); *see also* § 9.8.)

In sum, the NFL Parties' goal here is simple: to pay Monetary Awards to Settlement Class Members *who meet the diagnostic criteria for the Qualifying Diagnoses*. As the Court is well aware, that is the balance the Parties agreed to and the deal the Parties made, and that means that not every retired player with cognitive or neurological issues is entitled to a Monetary Award. To ensure this carefully calibrated and negotiated result, it is of critical importance that the Court and Special Masters use the AAP and AAPC resource on appeals involving technical medical issues outside of the Court's or Special Master's expertise, as the Claims Administrator has done in connection with audits.

For these reasons, the NFL Parties respectfully request a re-review of recent appeals that turned on medical issues for which an AAP member was not consulted, with

an accompanying stay of payment until that review is complete. We further respectfully again request that the Special Masters seek the advice of AAPs and AAPCs moving forward where an appeal raises technical medical issues.

Respectfully submitted,



Bruce Birenboim

cc: The Honorable Anita B. Brody
Special Master Jo-Ann Verrier, Esq.
Chris Seeger, Esq.
Brad S. Karp, Esq.